IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 773 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

ARVINDKUMAR KANJIBHAI RAYSURA OWNER & VENDOR OF SHOP

Appearance:

1. Criminal Appeal No. 773 of 2002

MR KT DAVE, LD. APP for Appellant.

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 23/08/2004

ORAL JUDGEMENT

Heard Mr. K.T. Dave, ld. APP, on behalf of the appellant-State. The present appeal is preferred under Section 378 of the Criminal Procedure Code (hereinafter

referred to as 'the Code') against the judgment and order of acquittal dated 6th June, 2002 passed by the learned Judicial Magistrate First Class, Kutiyana, Dist. Junagadh while disposing of Criminal Case No.94/96 initiated on the strength of the complaint filed by one Mr.Y.M. Karud, Food Inspector, Food and Drugs Control Department, Junagadh Circle, Junagadh.

2. As per the case of the prosecution, the respondent-accused had committed offences punishable under Sections 2(1A)(A), 2(1A)(C), 2(1A)(F), 2(1A)(M), 7(1), 7(5) and 16 of the Prevention of Food Adulteration Act, 1955 (hereinafter referred to as 'the PFA Act'). The allegation against the respondent-accused was that the complainant-Food Inspector purchased turmeric powder (loose) from the shop of the respondent-accused for the purpose of analysis. Thereafter, after following the procedure laid down in the relevant rules of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'the Rules), one part of the sample was sent to the Public Analyst. After analysis the Public Analyst found that the turmeric powder does not conform with the standards prescribed under the Rules and so after obtaining sanction from the Local Authority, he lodged a Criminal Case against the respondent-accused. Various pleas of defence during the course of trial were raised before the trial Court by the respondent-accused. Considering the nature of evidence led by the prosecution, ultimately the learned Magistrate found that the prosecution has failed in bringing home the charge beyond reasonable doubt and, therefore, the learned Magistrate recorded acquittal.

3. Having considered the totality of facts emerging from the evidence discussed by the learned Magistrate in the judgment, it appears that there was no strict compliance of Section 13(2) of the PFA Act. In sub-para of para:9 (running page no.16 of the judgment and page no.22 of the file), the learned Magistrate has discussed as to how there is infirmity in complying with the provisions of Section 13(2) of the PFA Act. It is observed that a cyclostyle letter was sent for intimation and there is no evidence that the report of analysis was also sent with cyclostyle forwarding letter. The learned Magistrate has also observed that the sample was not sent immediately for analyst. The sample was analyzed after 45 days as observed in para:10 of the decision. So there was also a breach of Rule 7(3) of the Rules. The learned Magistrate has rightly observed that this contingency has seriously prejudiced the petitioner-accused and the defence because it is not possible to say that he had

full opportunity to send the second sample to Central Food Laboratory as provided under scheme of Section 13.

4. So adopting the reasons assigned by the learned Magistrate while recording the acquittal and without entering into further discussion of the facts emerging from record, the Court is not inclined to disturb the acquittal because there is neither error of law nor gross error in appreciating evidence.

5. The reasons recorded by the learned Magistrate are logical and there is no element of perversity or patent illegality. It is true that the facts of the decision in the case of Hariram v/s. State of Rajasthan, reported in 2000 SC 1647 are materially different. But the ratio propounded by this Court and the Apex Court in number of decisions has been reiterated in this decision observing that where there is no infirmity in arriving at the conclusion, the finding of acquittal normally should not be interfered with. It is true that this Court is supposed to assign reasons while confirming the judgment and order of acquittal recorded by the trial Court as held by the Apex Court in the case of State of Orissa v/s. Debraj Tarini, reported in 2000 (10) SCC 173. But adopting the reasons assigned by the trial Court, the appeal against the judgment and order of acquittal can be decided and it is not necessary to rewrite the judgment or to assign individual separate reasons. The Apex Court in a decision in the case of Dwarkadas v/s. State of Hariyana, reported in (2002) 1 SCC 204, has reiterated the accepted principle of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is also possible. In the same way, the observations of the Apex Court in the case of Kanshiram v/s. State of Madya Pradesh, reported in AIR 2001 SC 2902 (Re.para :21) in respect of appeal against the order of acquittal, positively would help the respondents-accused and not to the appellant-State.

6. For short, the Court is not inclined to interfere with the judgment and order of acquittal recorded by the trial Court being a reasoned order based on proper appreciation of evidence.

For the reasons recorded hereinabove, this appeal is hereby dismissed. The judgment and order of acquittal dated 6th June, 2002 passed by the learned Judicial Magistrate First Class, Kutiyana, Dist. Junagadh, are hereby confirmed. The bail bond, if any, shall stand discharged.

(C.K. Buch, J)

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